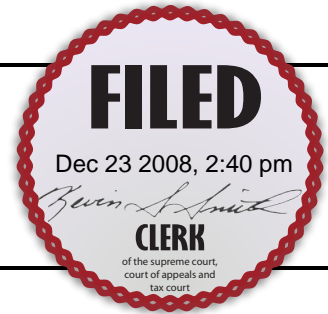


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**IN THE
INDIANA TAX COURT**



JOSEPH TIMMONS,

Petitioner,

V.

Cause No. 45T10-0706-TA-36

JOHN SCOTT, in his capacity as
Porter County Assessor and
JEAN SWANSON, in her capacity as
Liberty Township Assessor,

Respondents.¹

ON APPEAL FROM A FINAL DETERMINATION OF THE INDIANA BOARD OF TAX REVIEW²

NOT FOR PUBLICATION
December 23, 2008

FISHER, J.

¹ Joseph Timmons also named the Department of Local Government Finance (DLGF) as a respondent in this appeal. (See Pet'r V. Am. Pet. at 1.) The DLGF subsequently sought to be dismissed as a party, asserting that it had not been a party to the proceeding before the Indiana Board of Tax Review. (See Resp't Mot. to Dismiss at 1-2.) The Court now GRANTS the DLGF's motion. See Ind. Tax Court Rule 4(B).

² The Indiana Board issued two Certified Records in this case, one on December 19, 2006 and the other on June 29, 2007. The Court will hereinafter refer to them as “2006 Cert. Admin. R.” and “2007 Cert. Admin. R.”

Joseph Timmons (Timmons) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) valuing his mobile home for the 2003 tax year (year at issue) at \$18,000. The issue on appeal is whether Timmons is entitled to any further reduction in the assessed value of his mobile home due to depreciation.

FACTS AND PROCEDURAL HISTORY

Timmons owns a 1991 Fairmont Commander mobile home, located in Porter County, Indiana. For the year at issue, the Liberty Township Assessor assessed the mobile home at \$19,000. Timmons appealed his assessment first to the Porter County Property Tax Assessment Board of Appeals, and then to the Indiana Board.

On January 10, 2006, the Indiana Board conducted a hearing on Timmons's appeal. At the hearing, Timmons claimed that his property had been over-valued because mobile homes are depreciating assets. Timmons explained that he had purchased his mobile home for \$18,000 in 1994 and, consequently, the mobile home should not be assessed at a higher value nine years later. On April 7, 2006, the Indiana Board issued a final determination in which it held that the value of Timmons's mobile home "is no greater than [\$18,000]." (2006 Cert. Admin. R. at 69.)

On November 21, 2006, Timmons initiated an original tax appeal. On February 5, 2007, this Court, pursuant to the parties' joint motion, dismissed Timmons's appeal without prejudice and remanded the matter, ordering the Indiana Board to clarify whether its "no greater than \$18,000" meant "total assessed value or whether it meant . . . \$18,000 prior to depreciation." (See 2007 Cert. Admin. R. at 2.) On May 14, 2007, the Indiana Board issued a final determination stating that the total assessed value of

Timmons's mobile home was no more than \$18,000 because Timmons failed to present sufficient evidence to support any further reduction in the assessed value.

On June 14, 2007, Timmons initiated this original tax appeal. The Court heard the parties' oral arguments on November 14, 2008. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Knox County Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 180 (Ind. Tax Ct. 2005). Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2008). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Oso/o Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

On appeal, Timmons argues that his assessment is "contrary to law" because the Indiana Board did not apply depreciation to his property. (See Pet'r Reply Br. at 3.)

Timmons asserts “that the depreciation should begin from the date of purchase because the plain meaning of depreciation reflects a reduced value from a point in time, usually the acquisition of the property in question.” (Pet’r Mem. of Law at 4.) Timmons, however, misses the point.

During the year at issue, mobile homes were assessed on the basis of their true tax value. See 50 IND. ADMIN. CODE 3.2-4-1(a) (West 2003) (repealed 2007). “True tax value” is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. In turn, a property’s market value-in-use “may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property.”³ Manual at 2 (footnote added). Indiana’s assessment regulations further provide that all assessments between March 1, 2002 and March 1, 2005 should reflect the property’s market value-in-use as of January 1, 1999. See Manual at 2, 4. See also *117 Republic Ltd. P’ship v. Brown Twp. Assessor*, 851 N.E.2d 399, 400 n.2 (Ind. Tax Ct. 2006).

³ “In markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange. In markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange[.]” 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2.

At the Indiana Board hearing, Timmons presented evidence that he purchased his property in 1994 for \$18,000. (2006 Cert. Admin. R. at 33-34, 166-67.) Timmons also presented evidence of a 2003 manufactured home that was sold in 2004 for \$20,000, claiming that it served as “a reference point of [the] replacement [value] of my property.” (2006 Cert. Admin. R. at 65, 164-65.) In addition, Timmons provided multiple sales listings, dated June 2004 through December 2005, of manufactured homes constructed between 1971 through 1998 with asking prices ranging from \$1,500 to \$18,500. (2006 Cert. Admin. R. at 65.)

In arguing that these homes were comparable to his mobile home, Timmons presented evidence of their age, size and number of bedrooms and bathrooms. (See 2006 Cert. Admin. R. at 55-57, 68, 165.) This is not enough to demonstrate the comparability of these homes to his property. Rather, a taxpayer must provide specific reasons why a property is comparable and explain how any differences between the taxpayer’s property and the purportedly comparable properties affect the relevant market value-in-use of the properties. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005), *review denied*. Even if Timmons had established that the value of the homes were comparable and the values were related to the value of his home, without some explanation as to how those values relate to January 1, 1999, however, they do not carry any probative value. See *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax. Ct. 2006) (finding that evidence regarding a property’s value in 1997 and 2003 “has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value”). Accordingly, the Indiana Board properly found that Timmons had “offered no probative evidence that

would allow a finding of how the mobile home had declined in value between its purchase and the assessment date.” (See 2007 Cert. Admin. R. at 7.) Because Timmons did not present evidence of his property’s market value-in-use as of January 1, 1999, there is no basis from which to determine the degree to which the property declined in value between its 1994 purchase date and the year at issue. To the extent that there were inferences to be made from his evidence, it was up to Timmons to walk the Indiana Board through his analysis. Because Timmons did not meet this burden, the final determination of the Indiana Board is not contrary to law.

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is
AFFIRMED.